

## Small Business Administration

## § 120.823

### § 120.810 Applications for certification as a CDC.

(a) Applicants for certification as a CDC must apply to the SBA District Office serving a proposed Area of Operations. An applicant must demonstrate that it satisfies the certification and operating criteria in §§ 120.820 through 120.829, as well as:

(1) The need for 504 services (if there is already a CDC in the Area of Operations, the applicant must justify the need for another and present a plan to avoid duplication or overlap);

(2) A budget, approved by its Board of Directors; and

(3) A plan to meet CDC operating requirements (without specializing in a particular industry).

(b) The AA/FA, with the recommendation of each District Office in the applicant's proposed Area of Operations, shall make the certification decision.

### § 120.811 Public notice of CDC certification application.

(a) As part of the application process, the applicant must publish a notice in a general circulation newspaper in the proposed Area of Operations, including the name and location of the proposed CDC, its purpose and Area of Operations, and the names and addresses of its officers and directors. The applicant shall send a copy of the notice to SBA. The notice shall provide the public at least 30 days to submit written comments to the District Office. The SBA shall consider the comments in making its decision on the application.

(b) CDCs serving the proposed Area of Operations shall be directly notified and given at least 30 days to comment.

### § 120.812 Probationary period for newly certified CDCs.

(a) Newly certified CDCs will be on probation for a period of two years, at the end of which the CDC must petition for:

(1) Permanent CDC status;

(2) A single, one-year extension of probation; or

(3) ADC status.

(b) SBA will consider failure to file a petition before the end of the probationary period as a withdrawal from the 504 program. If the CDC elects ADC

status or withdrawal, it must transfer all funded and/or approved loans to another CDC, SBA, or another servicer approved by SBA.

### REQUIREMENTS FOR CDC CERTIFICATION AND OPERATION

### § 120.820 CDC non-profit status.

A CDC must be a non-profit corporation (or limited liability company) in good standing. (For-profit CDCs certified by SBA prior to January 1, 1987 may retain their certifications.) An SBIC may not become a CDC.

### § 120.821 CDC Area of Operations.

A CDC must have a designated Area of Operations, specified by the CDC and approved by SBA. There can be only one statewide CDC in each state, which must foster economic development throughout the state and provide 504 assistance to areas not adequately served by other CDCs.

### § 120.822 CDC membership.

A CDC must have at least 25 members (or stockholders for for-profit CDCs approved prior to January 1, 1987). No person or entity may own or control more than 10 percent of the CDC's voting membership (or stock). Members must be representative of and provide evidence of active support in the Area of Operations. Members must be from each of the following groups:

(a) Government organizations responsible for economic development in the Area of Operations and acceptable to SBA;

(b) Financial institutions that provide commercial long-term fixed asset financing in the Area of Operations;

(c) Community organizations dedicated to economic development in the Area of Operations such as chambers of commerce, foundations, trade associations, colleges, or universities; and

(d) Businesses in the Area of Operations.

### § 120.823 CDC Board of Directors.

The CDC must have a Board of Directors chosen from the membership by the members, and representing at least three of the four membership groups.

## **§ 120.824**

No single group shall control. The Board members must be responsible officials of the organizations they represent, and at least one must possess commercial lending experience. The Board must meet at least quarterly and shall be responsible for CDC staff decisions and actions. A quorum shall require at least 5 Directors. If there is a vote on loan approval or servicing actions, at least one Board member with commercial loan experience approved by SBA must be present and vote. As an alternative, the Board may obtain the recommendation of another person approved by SBA and possessing commercial lending experience.

### **§ 120.824 Professional management and staff.**

A CDC must have full-time professional management, including an Executive Director (or the equivalent) managing daily operations. It must also have a full-time professional staff qualified by training and experience to market the 504 Program, package and process loan applications, close loans, service the loan portfolio, and sustain a sufficient level of service and activity in the Area of Operations.

(a) *Contracting out to third parties.* CDCs may obtain, under contract, marketing, packaging, processing, and servicing services from qualified Lender Service Providers, as that term is defined in part 103 of this chapter, located in the Area of Operations, subject to SBA's prior written approval. CDCs may contract for outside legal and accounting services without SBA approval. Compensation under all such contracts must be reasonable and customary for similar services in the Area of Operations. SBA may audit the contracts.

(b) *Contracting out to other CDCs.* CDCs may contract with other CDCs for specific services, subject to SBA's prior written approval.

### **§ 120.825 Financial ability to operate.**

A CDC must be able to sustain its operations continuously, with reliable sources of funds (such as income from services rendered and contributions from government or other sponsors).

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### **§ 120.826 Basic requirements for operating a CDC.**

A CDC must operate in accordance with applicable statutes, regulations, policy notices, SBA's SOPs, and the information in its application. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain the records and submit the reports required by SBA.

### **§ 120.827 Services a CDC provides to small businesses.**

(a) A CDC must operate in and adequately service its Area of Operations. It must market the 504 program, package and process 504 loan applications, and close and service 504 loans. A CDC's loan portfolio must be diversified by business sector.

(b) A CDC may provide small businesses with financial and technical assistance, or may help small businesses obtain such assistance from other sources, including preparing, closing, and servicing loans under contract with Lenders in SBA's 7(a) program.

(c) A CDC also may loan amounts to the Borrower equal to the value of all or part of the Borrower's contribution to a Project in the form of cash or land, including site improvements, previously acquired by the CDC.

### **§ 120.828 Minimum level of CDC lending activity.**

A CDC must provide at least two 504 loan approvals each full fiscal year.

### **§ 120.829 Job Opportunity average a CDC must maintain.**

(a) A CDC's portfolio must reflect an average of one Job Opportunity per \$35,000 of 504 loan funding. The AA/FA may permit a CDC to average up to one per \$45,000 for good cause in:

- (1) Alaska;
- (2) Hawaii;
- (3) State-designated urban or rural jobs and enterprise zones;
- (4) Empowerment Zones and Enterprise Communities; and
- (5) Labor Surplus Areas listed in the Department of Labor's publication "Area Trends."

(b) A CDC must indicate in its annual report the Job Opportunities actually